

## REMARKS

### The Rejections Under 35 USC § 112, second paragraph

Claim 14 is amended as recommended by the Examiner.

### The Rejections Under 35 USC § 102

These rejections are moot in view of the amendments. Claim 7 does not include compounds of formula Ia, and claim 19 does not include the option for n being 0.

Claim 23 appears to have been erroneously rejected. The compounds of Vachy do not allow for the R group therein to, e.g., contain a corresponding group to the phenylene ring of claim 23 to which W, X, Y and Z are attached.

### New Claims

New claim 33, directed to a liquid crystalline media, recites the compounds of former claims 7 and 19 as components of the liquid crystalline media. Vachy does not teach or suggest a liquid crystalline media. Vachy only teaches the compounds therein to be useful as antiviral agents against certain viruses.

New compound claims are also added which are not taught or suggested by Vachy.

### Withdrawn Claims

Regarding the withdrawn method and process claims, applicants bring the attention of the Examiner to MPEP § 821.04, Rejoinder, which states that “if the elected invention is directed to the product and the claims directed to the product are subsequently found patentable, process claims [both process of making and using] which either depend from or include all the limitations of the allowable product will be rejoined.” Since the claims from which the withdrawn method and process claims depend are allowed, rejoinder of these withdrawn claims is respectfully requested in accord with the rejoinder provisions of the MPEP.

Regarding withdrawn claim 10, which is directed to an electro-optical display comprising a liquid-crystal medium which comprises a compound according to claim 3, the rejection should be withdrawn, and such is respectfully solicited. The compounds according to claim 3 are allowed. Allowing this dependent claim would not require an undue search burden. No further, or only a minimal, search would be necessary to allow claim 10 since the

claim it depends from is already allowed. A product comprising an allowed compound should be readily allowable.

Additionally, the restriction is improper. The article of product claim 10 is a combination of the compounds of elected and allowed claim 3 and other components. As such, it is respectfully submitted that the products of the elected claims and the combination thereof with other components to form the product of claim 10 are related as combination-subcombination. Since they are related as combination-subcombination, the standard for requiring restriction herein is not met.

In order to establish that combination and subcombination inventions are distinct, two-way distinctness must be demonstrated. To support a requirement for restriction, both two-way distinctness and reasons for insisting on restriction are necessary, i.e. separate classification, status, or field of search. See MPEP §808.02. If it can be shown that a combination, as claimed

(1) does not require the particulars of the subcombination as claimed for patentability (to show novelty and unobviousness), and

(2) the subcombination can be shown to have utility either by itself or in other and different relations, the inventions are distinct. When these factors cannot be shown, such inventions are not distinct.

(Emphasis added.) (M.P.E.P. §806.05(c))

It is submitted that the first requirement for two-way distinctness is not established herein. The combination does require the particulars of the subcombination. The product of claim 10 requires the exact same compound of allowed claim 3, i.e., the product of the subcombination claim 3 of the elected group. To this end, the combination claims are even dependent upon the subcombination-product claims and the subcombination-products are an essential distinguishing feature of the combination-products.

It is respectfully submitted that the relationship between the claimed subject matter when properly characterized, does not provide a basis for restriction herein. Thus, the restriction requirement should be withdrawn.

The Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,

/Csaba Henter/

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Csaba Henter, Reg. No. 50,908  
Anthony J. Zelano, Reg. No. 27,969  
Attorneys for Applicants

MILLEN, WHITE, ZELANO & BRANIGAN, P.C.  
Arlington Courthouse Plaza 1  
2200 Clarendon Boulevard, Suite 1400  
Arlington, VA 22201  
Telephone: 703-243-6333  
Facsimile: 703-243-6410  
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